APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF MONTANA

1991

No. 90-557/90-558

WILLIAM D. FORD,
Plaintiff and Respondent

v.

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware corporation,
Defendant and Appellant,

THOMAS L. JOHNSON,
Plaintiff and Respondent,

v.

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware corporation,
Defendant and Appellant

[Filed Aug. 12, 1991]

APPEAL FROM:

District Court of the Thirteenth Judicial District,
In and for the County of Yellowstone,
The Honoroable Russell K. Fillner, Judge presiding;
The Honorable William J. Speare, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Kurt W. Kroschel, Russell D. Yerger,
Kurt W. Kroschel & Assoc., Billings, Montana

For Respondent:

Robert S. Fain, Jr., James C. Reuss, Wright Tolliver & Guthals, P.C., Billings, Montana; Gary K. Wood, Morrisard & Rossi, P.C., Aurora, Colorado

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Submitted on Briefs: April 18, 1991

Decided: August 12, 1991

/s/ Ed Smith
Clerk

Justice Terry N. Trieweiler delivered the opinion of the Court.

The plaintiffs, William D. Ford and Thomas L. Johnson, filed separate actions in the District Court for the Thirteenth Judicial District, Yellowstone County, pursuant to the Federal Employers Liability Act found at 45 U.S.C. §§ 51-60. The defendant in both cases, Burlington Northern Railroad Company, moved to transfer venue to Hill County for the reason that that county was its principal place of business in Montana, and therefore, should serve as its residence for purposes of determining proper venue.

In reliance on our decision in *Haug v. Burlington Northern R. Co.* (1989), 236 Mont. 368, 770 P.2d 517, the District Court denied defendant's motion in both cases. From those orders denying defendant's motion for change of venue, defendant appeals. Those cases have been consolidated for purposes of appeal. We affirm the District Court.

Defendant raises the following issue on appeal:

Does § 25-2-118, MCA, as applied by this Court, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by treating nonresidents, such as defendant, differently than residents for purposes of venue without any rational basis for dissimilar treatment?

FACTUAL BACKGROUND

Plaintiffs are both residents of Sheridan, Wyoming. Johnson alleges in his complaint that he was injured during the course of his employment with defendant on August 22, 1987, while working as a locomotive engineer. Ford alleges in his complaint that he was injured on February 7, 1989, while employed by defendant as a brakeman. Both plaintiffs were injured while working on their employer's premises in Sheridan, Wyoming. Both

have alleged that defendant failed to provide them with a safe place to work at that location.

Defendant is a railroad operating in interstate commerce. It is incorporated in the state of Delaware, and its principal place of business is Fort Worth, Texas. It operates its business in several Montana counties, including Yellowstone County. However, it alleges, and for purposes of this appeal, we will assume that its Montana headquarters are located in Hill County.

Plaintiffs' exclusive remedy for injuries sustained during the course of their employment with the railroad is their claim pursuant to the Federal Employers Liability Act, 45 U.S.C. § 51-60. Section 56 of the Act provides that an action to enforce rights granted by the Act can be brought in either federal or state courts, and establishes venue in those cases where the action is brought in federal court. Section 56 provides in relevant part as follows:

> Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states.

Defendant does not deny that it does business in Yellowstone County, Montana, and that if plaintiffs had chosen the federal district court as their forum, defendant could have been properly sued in the federal district court located in Billings, Montana. Furthermore, section 56 has been the law for over 80 years. Its effect has always been to treat railroads differently than other parties. However, defendant cites no authority holding that it is unconstitutional for that reason.

Defendant objects to the rule by which venue was established in this case under state law.

We apply state law to determine proper venue in this case pursuant to *Miles v. Illinois Central R. Co.* (1942), 315 U.S. 698, 62 S.Ct. 827, 86 L.Ed. 1129, in which the U.S. Supreme Court established that rules of venue in FELA actions filed in state courts are properly left to the various states.

In Montana, the general venue statute is § 25-2-118, MCA, which provides as follows:

> Unless otherwise specified in this part:
>
> (1) except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them may reside at the commencement of the action;
>
> (2) if none of the defendants reside in the state, the proper place of trial is any county the plaintiff designates in the complaint . . . .

In *Haug*, 770 P.2d 517, we held that § 25-2-118, MCA (1989), allowed plaintiffs in FELA actions to sue out-of-state residents, such as defendant, in any county in the state.

We stated:

> From the case history in Montana, we conclude that a plaintiff is entitled to bring a tort action against a non-resident defendant in either the county where the tort occurred or in any county of this state. This Court has consistently held that a foreign corporation has no county of residence for venue purposes and can be sued in any county selected by the plaintiff. *Hanlon v. Great Northern Railway Co.* (1928), 83 Mont. 15, 268 P. 547; *Truck Insurance Exchange v. N.F.U. Property & Casualty Co.* (1967), 149 Mont. 387, 427 P.2d 50; *Foley v. General Motors Corp.* (1972), 159 Mont. 469, 499 P.2d 774. The

> holdings of these cases are consistent with the provisions of § 25-2-118(2), MCA, which in substance states that any county designated by the plaintiff is the proper place of trial if no defendants reside in Montana.

Haug, 770 P.2d at 519.

It is defendant's position that Montana's venue statute, as applied by this Court in *Haug*, discriminates against out-of-state corporations without any apparent justification, and therefore, denies defendant equal protetcion under our state's laws.

DISCUSSION

Although there is some inconsistency in the federal case law, our decision appears to be controlled by a series of U.S. Supreme Court decisions, beginning with *Cincinnati Street Ry. Co. v. Snell* (1904), 193 U.S. 30. In that case, the defendant railroad was sued in the county of its principal place of business. The plaintiff was allowed to transfer venue to an adjoining county based upon a venue statute which permitted transfer where one of the parties was a corporation with more than 50 stockholders, and the action was pending in the county in which the corporation had its principal office or transacted its principal business. It was the defendant's position that equal protection of the laws was denied because an equal opportunity to transfer venue was not conferred on the corporation. The U.S. Supreme Court held that the Fourteenth Amendment does not guarantee citizens the right to have disputes determined in one forum, as opposed to another. It stated:

> As previously shown, the Supreme Court of the State of Ohio pointed out in its opinion that the rights of the parties were governed in the court to which the case was transferred by the same law and the same rules which would have prevailed had the case been

tried in the court in which it was originally brought. And this has not been challenged either by the assignments of error or any of the arguments made to sustain them. The proposition to which the case reduces itself is therefore this: That although the protection of equal laws equally administered has been enjoyed, nevertheless there has been a denial of the equal protection of the law within the purview of the Fourteenth Amendment, only because the State has allowed one person to seek one forum and has not allowed another person, asserted to be in the same class, to seek the same forum, although as to both persons the law has afforded a forum in which the same and equal laws are applicable and administered. But it is fundamental rights which the Fourteenth Amendment safeguards and not the mere forum which a state may see proper to designate for the enforcement and protection of such rights. Given therefore a condition where fundamental rights are equally protected and preserved, it is impossible to say that the rights which are thus protected and preserved have been denied because the State has deemed best to provide for a trial in one forum or another. It is not under any view the mere tribunal into which a person is authorized to proceed by a state which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the state has provided equal laws prevail.

It follows that the mere direction of the state law that a cause under given circumstances shall be tried in one forum instead of another, or may be transferred when brought from one forum to another, can have no tendency to violate the guarantee of the equal protection of the laws where in both the forums equality of law governs and equality of administration prevails. In *Iowa Central*

Railway Company v. Iowa, 160 U.S. 389, 393, this Court said:

> "But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case, it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the state court prosecuted or determined by one form of action instead of by another."

Cincinnati Street Ry. Co., 193 U.S. at 36-37.

It is defendant's position that this issue is controlled by the Supreme Court's decision in *Power Mfg. Co. v. Saunders* (1927), 274 U.S. 490, 47 S.Ct. 678. In that case, the defendant corporation, which was a resident of Ohio, was sued by one of its employees in the state of Arkansas. It was sued in a county other than the county where its principal place of business was located. For that reason, it challenged the Arkansas venue statute which required that actions of that type against a resident corporation be brought in the county where it had a place of business or in which its chief officer resided, but permitted actions against foreign corporations to be brought in any county in the state. In that case, where the defendant did no business and had no office, officer, or agent in the county where suit was brought, the Supreme Court found no rational basis for distinguishing between foreign and domestic corporations, and held that since discriminatory treatment was without a reasonable basis and essentially arbitrary, it violated the Equal Protection Clause of the Fourteenth Amendment.

We find that the *Saunders* case is not controlling for several reasons.

First, *Saunders* is distinguishable on its facts. In that case, the defendant did no business in the county where venue was established. In this case, defendant admittedly does business in Yellowstone County. In *Saunders*, plaintiff's action was brought pursuant to the common law of the state of Arkansas. In this case, plaintiffs' claims are based upon federal statutory law which was designed to provide injured railroad workers with as many options as possible when choosing the venue within which to file their complaint.

Second, the *Saunders* decision did not preclude disparate treatment under a state's venue laws where a rational basis could be shown for such treatment. In fact, when referring to the requirements of the Fourteenth Amendment, that Court stated:

> It does not prevent a State from adjusting its legislation to differences in situation or forbid classification in that connection; but it does require that the classification be not aribtrary but based on a real and substantial difference having a reasonable relation to the subject of that particular legislation.
>
> . . . the distinguishing principle being that classification must rest on differences pertinent to the subject in respect of which the classification is made.

Saunders, 274 U.S. at 493-94 (citations omitted).

Without addressing the greater issue of whether there is a rational basis for treating all out-of-state corporations differently from all domestic corporations, it does appear that there is a commonly accepted historic justification for allowing railroad workers greater flexibility when choosing a forum than other litigants. In *LaBella v. Burlington Northern, Inc.* (1979), 182 Mont. 202, 595 P.2d 1184, we cited the following legislative history for

45 U.S.C. § 56, which would determine venue if plaintiffs had brought their action in federal court.

In a Senate Committee Report, the purpose of the amendment to section 6 H.R. 17263, 61st Cong., 2d Sess. (1910), was said to be:

> ". . . to make entirely manifest the good faith of the legislature in the enactment of the employers liability law, which places such stringent liability upon the railroads for injuries to their employees as to compel the highest safeguarding of the lives and limbs of the men in this dangerous employment. The tremendous loss of life and limb on the railroads is appalling . . .
>
> "It was the intention of Congress in the enactment of this law originally and it may be presumed to be the intention of the present Congress to shift the burden of the loss resulting from these casualties from 'those least able to bear it' and place it on those who can . . . 'measurably control their causes'." Sen.Rep.No. 432, 61st Cong., 2d Sess., (1910), 45 Cong.Rec. 4041 (1910).

In reporting the bill out of committee, Senator Borah stated his objection to the law as it existed:

> "Plaintiff may sometimes be compelled to go a great distance in order to have his cause of action against the defendant by reason of the fact that now the action must be brought in the district in which the defendant is an inhabitant . . .
>
> ". . . If this bill should be passed, the law will be remedied in that respect, enabling the plaintiff to bring his action where the cause of action arose or where the defendant may be doing business. The bill enables the plaintiff to find the

> corporation at any point or place where it is actually carrying on business and there lodge his action, if he chooses to do so." 45 Cong.Rec. at 4034-4035 (1910).
>
> The strength of the policy behind section 6 can be further gleaned from Congress' refusal to pass the Jennings Bill in 1947. It would have repealed most of section 6 and limited the forum choices of injured railroad workers to the district where the cause of action arose or where the plaintiff resided. If process could not be served in either of those places, an action could be brought where defendant was doing business. H.R. 1639, 80th Cong., 1st Sess., (1947).

LaBella, 595 P.2d at 1186.

It is clear then that national policy, dating back to 1910, which was intended to address the dangerous working conditions of railroad workers and to facilitate recovery for families of injured workers, favors a policy of allowing railroad workers to sue their employer at any location where the employer does business. That national policy presents a justification for disparate treatment in this case, which was not present in the *Saunders* case.

Finally, subsequent decisions by the U.S. Supreme Court raise a question about whether *Saunders* continues to be good law.

Initially, *Saunders* was not a unanimous opinion. Mr. Justice Holmes, with whom Mr. Justice Brandeis concurred, dissented from the majority opinion. He argued that:

> A foreign corporation merely doing business in the State and having its work elsewhere will be more or less inconvenienced anywhere away from its headquarters, but the difference to it between one

> county and another is likely to be less than it will be to a corporation having its headquarters in the State. So I repeat that in my opinion the plaintiff in error cannot complain if the State holds it liable to a transitory action wherever it may be served and sued, as it would have been liable at common law.

Saunders, 274 U.S. at 498.

Not long after the *Saunders* decision, Mr. Justice Holmes wrote for the majority in *Bain Peanut Co. v. Pinson* (1931) 282 U.S. 499, when the Supreme Court denied a challenge to a Texas venue statute based on the Equal Protection Clause.

In *Bain Peanut Co.*, the Texas venue statute being challenged allowed plaintiffs to sue a private corporation in the county where an action arose, but limited suits against unincorporated individuals to the county in which they were domiciled. The defendant corporation challenged that disparate treatment as a violation of the Equal Protection Clause of the Fourteenth Amendment. In denying the defendant's challenge, Justice Holmes, now writing for the majority, indicated that that Court's prior decision in *Cincinnati Street Ry. Co.*, was still controlling. The court held as follows:

> Coming then to the merits, we are of the opinion that the judgment was right. The interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints. In deciding whether a corporation is denied the equal protection of the laws when its creator establishes a more extensive venue for actions against it than is fixed for private citizens, we have to consider, not a geometrical equation between a corporation and a man, but whether the difference does injustice to the class generally, even though it bear hard in some particular case, which

> is not alleged or proved here. *Louisville & Nashville R. Co. v. Barber Asphalt Paving Co.*, 197 U.S. 430, 434. *Patsone v. Pennsylvania*, 232 U.S. 138, 144. This it is for the corporation to make out. The range of the State's discretion is large. *Armour & Co. v. North Dakota*, 240 U.S. 510, 516, 517. The question seems to be answered by *Cincinnati Street Ry. Co. v. Snell*, 193 U.S. 30, 36, 37, which lays down that, if the protection of fundamental rights by equal laws equally administered is enjoyed, the Constitution does not forbid allowing one person to seek a forum from which another in the same class is excluded.

Bain Peanut Co., 282 U.S. at 501.

More recently, in *American Motorist Ins. Co. v. Starnes* (1976), 425 U.S. 637, 96 S.Ct. 1800, 48 L.Ed.2d 263, *Cincinnati Street Ry. Co.* was again cited by the U.S. Supreme Court with approval. In *Starnes*, the defendant, an out-of-state corporation, challenged Texas' venue statutes which treated domestic and foreign corporations differently. Domestic corporations had to be sued in the county in which they were domiciled unless plaintiff, at a preliminary hearing, could prove by a preponderance of the evidence that he had a cause of action. Foreign corporations could be sued in counties other than their Texas domicile without a similar procedural requirement. The defendant challenged the disparate treatment on the grounds that it constituted invidious discrimination against foreign corporations in violation of the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court denied defendant's challenge to the Texas venue statutes for the reason that as a practical matter there was no appreciable advantage for domestic corporations. The Supreme Court arrived at this conclusion after reviewing Texas case law which suggested that providing a prima facie case was sufficient and the venue proceedings against domestic corporations were usually

truncated. In arriving at its decision, the Supreme Court cited with approval language from *Cincinnati Street Ry. Co.*, which is set forth above. However, in language relevant to this decision, that Court also stated:

> We are not confined to the language of the statute under challenge in determining whether that statute has any discriminatory effect. Just as a statute nondiscriminatory on its face may be grossly discriminatory in its operation, *Williams v. Illinois*, 399 U.S. 235, 242 (1970); *Griffin v. Illinois*, 351 U.S. 12, 17 n. 11 (1956), so may a statute discriminatory on its face be nondiscriminatory in its operation. There being no discriminatory effect achieved by the aspects of the Texas venue provisions calling for establishment of a cause of action, we have no difficulty in concluding that appellant's equal protection challenge to the Exception 27 must be rejected.

Starnes, 425 U.S. at 645.

In a footnote to the above statement, the majority noted:

> [6] Our conclusion makes unnecessary consideration of appellant's argument that *Power Mfg. Co. v. Saunders*, 274 U.S. 490 (1927), requires invalidation of Exception 27. Though more recent decisions raise the question whether *Saunders* continues to be good law, *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959); *Metropolitan Cas. Ins. Co. v. Brownell*, 294 U.S. 580 (1935); *Bain Peanut Co. v. Pinson*, 282 U.S. 499 (1931), as appellant argues, the Court in *Saunders* did conclude that the venue statute involved there treated foreign corporations without reasonable basis and arbitrarily.

Mr. Chief Justice Burger, with whom Mr. Justice Rehnquist concurred, would have denied the defendant's challenge to the Texas venue statute simply on the basis of *Cincinnati Street Ry. Co.* and *Bain Peanut Co.*

Likewise, in this case the statute which is challenged by defendant is nondiscriminatory in its operation. The practical effect of our venue statute in this case is that defendant is required to defend itself in Yellowstone County, Montana—a location where it could admittedly be required to appear and defend itself against the same claim, had plaintiffs chosen to sue it in federal district court.

For all of the above reasons, we affirm the orders of the District Court, and hold that § 25-2-118, MCA (1989), as applied by this Court in *Haug* does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

As in *Haug*, our decision is based on the facts in this case, and in particular, the strong national policy favoring a plaintiff's selection of forum in actions brought under the Federal Employers Liability Act.

We affirm the denial of defendant's motion for a change of venue.

/s/ [Illegible]
Justice

We concur:

/s/ J. A. Turnage
Chief Justice

/s/ John Conway Harrison

/s/ Karla M. Gray

/s/ William E. Hunt, Sr.

/s/ R. C. McDonough

/s/ [Illegible]
Justices

APPENDIX B

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

No. DV 89-975

Judge William J. Speare

THOMAS L. JOHNSON,
Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,
A Delaware corporation,
Defendant.

ORDER

Presently pending before the Court is Defendant's Motion for Change of Venue. Notification of a constitutional challenge was mailed to the Attorney General of the State of Montana on August 2, 1990. The Court having received no response from the Attorney General deems any objection waived. The Court has reviewed the briefs and other supporting documents filed herein and is now prepared to rule.

BN is a foreign corporation organized under the laws of Delaware, with its principle place of business in Fort Worth, Texas. BN operates rail lines across Montana, including Yellowstone County.

Johnson filed the present action in Yellowstone County. Inasmuch that BN is not a resident of Montana, Yellowstone County as the county designated by the Plaintiff in the Complaint is the proper place for trial. MCA § 25-2-

118(2). Accordingly, Defendant's Motion for Change of Venue is DENIED.

Secondly, BN challenges the constitutionality of the venue statute provides in MCA § 25-2-118 on the grounds that it violates the equal protection clause of the 14th Amendment of the United States Constitution.

The statute is presumed to be valid and its constitutionality will not be condemned unless its invalidity is shown beyond a reasonable doubt. *State vs. Cunningham*, 39 Mont. 137, 103 P.497 (1909).

Therefore, BN bears the burden of establishing beyond a reasonable doubt that MCA § 25-2-118 violates the equal protection clause of the 14th Amendment.

In essense BN argues that similar classifications of corporations are receiving dissimilar treatment for litigation purposes under the current venue statutes.

However, under § 25-2-118, all railroads incorporated in other states and doing business in Montana are treated similarly and can be sued in any county the Plaintiff choses. Thus, BN has failed to establish beyond a reasonable doubt that MCA § 25-2-118 violates the equal protection clause.

Based on the foregoing, Defendant's Motion for Change of Venue is DENIED.

DATED and SIGNED this 21 day of Sept., 1990

/s/ William J. Speare
WILLIAM J. SPEARE
District Judge

cc: Robert S. Fain, Jr.
Gary K. Wood
Russell K. Yerger

APPENDIX C

MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT, YELLOWSTONE COUNTY

Cause No. DV-89-974

WILLIAM D. FORD,
Plaintiff

vs

BURLINGTON NORTHERN RAILROAD COMPANY,
a Delaware Corporation,
Defendant

ORDER AND MEMORANDUM

This matter came before the Court on the motion of the defendant for change of venue. The parties have filed their briefs in support and opposition thereto. Notification of a constitutional challenge was mailed to the Montana Attorney General on May 5, 1990. The Court having received no response from the Attorney General deems any objection waived. The Court having carefully considered the briefs of counsel, now determines that the defendant's motion for change of venue must be denied for the reasons set forth in the following Memorandum.

Now, therefore;

IT IS ORDERED that the defendant's motion for change of venue is denied.

DATED this 7th September, 1990.

/s/ Russell K. Fillner
RUSSELL K. FILLNER
District Judge

MEMORANDUM

Defendant Burlington Northern Railroad Company (BN) has requested a change of place of trial to Hill County, Montana, on the grounds that Hill County is BN's "principal place of business in Montana." In addition, BN asserts that Montana's venue statutes (Title 25, chapter 2, part 1 MCA) are unconstitutional in that said statutes, as interpreted and applied by the Montana Supreme Court, discriminate against foreign corporations in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

FACTS

William D. Ford (hereinafter Ford) has brought this action against BN to recover for injuries received at a roundhouse in Sheridan Wyoming while in the course of his employment with BN. The action is brought to recover damages pursuant to the Federal Employees Labor Act (FELA).

BN is a foreign corporation organized under the laws of Delaware, with its principle place of business in Fort Worth, Texas. BN operates rail lines across Montana, including Yellowstone County.

DISCUSSION

ISSUE: Does the Montana venue statute, section 25-2-118 MCA, pass constitutional muster as it applies to non-resident defendants in a FELA action?

Section 6 of the FELA, 45 USC Section 56 provides:

> No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.
>
> Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the

cause of action arose, or *in which the defendant shall be doing business* at the time of commencing such action. *The jurisdiction of the courts shall be concurrent with that of the courts of the several States.* (emphasis supplied).

Thus, under the FELA an injured railroad worker may file suit in either federal or state court. Accordingly, Ford has properly brought his action in state court.

Furthermore, in FELA actions filed in state court, the United States Supreme Court has held that venue is properly left to the practice of the forum. *Miles v. Illinois Central Railroad*, 315 U.S. 698, 703, 62 S. Ct. 827, 830 (1942). Therefore, the pertinent Montana venue statutes provide:

MCA Section 25-2-118, Residence of the defendant.

Unless otherwise specified in this part:

(1) except as provided in subsection (3), the proper place for trial for all civil actions is the county in which the defendants or any of them reside at the commencement of the action;

(2) if none of the defendants reside in the state, the proper place of trial is the county the plaintiff designates in the complaint;

(3) the proper place for trial of an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action.

MCA 25-2-115, Multiple proper counties.

If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not

> brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

The Montana Supreme Court in *Haug v. Burlington Northern R. Co.*, 770 P.2d. 516 (1989) addressed the identical issue provided above and stated:

> This Court has consistently held that a foreign corporation has no county of residence for venue purposes and can be sued in any county selected by the plaintiff. *Hanlon v. Great Northern Railway Co.* (1928), 83 Mont. 15, 268 P. 547; *Truck Insurance Exchange v. N.F.U. Property and Casualty Co.* (1967), 149 Mont. 387, 427 P.2d 50; *Foley v. General Motors Corp.* (1972), 159 Mont. 469, 499 P.2d 774. The holdings of these cases are consistent with the provisions of Section 25-2-118(2), M.C.A. which in substance states that any county designated by the plaintiff is the proper place of trial if no defendants reside in Montana.

Ford's action brought in Yellowstone County is clearly proper as BN is not a resident of Montana and therefore, pursuant to Section 25-2-118(2) cited above a proper place for trial is the county designated by the plaintiff in the complaint.

Section 25-2-201 MCA states:

> *When change of venue required.*
>
> The Court or judge must, on motion change the place of trial in the following cases:
>
> (1) When the county designated in the complaint is not the proper county;

Accordingly, since Yellowstone County is a proper place for trial, the defendants motion to change place of trial

to Hill County is denied pursuant to 25-2-201 MCA. Similarly, the Montana Supreme Court in *Haug* further stated:

> While it can be said that our venue statutes dictate the "practice" of our forum, we are concerned with certain policies set forth in previous FELA cases in determining our forum practice. Specifically, this Court has stated that the FELA is to be given liberal construction in favor of the injured railroad employees so that it may accomplish humanitarian and remedial purposes, following the policy set forth by the United States Supreme Court in *Urie v. Thompson* (1949), 337 U.S. 163, 69 S.Ct. 1018, 93 L.Ed. 1282. See *State ex rel Burlington Northern Railroad Co. v. District Court* (Mont 1987), 746 P.2d 1077, 44 St.Rep. 2003; *Bevacqua v. Burlington Northern, Inc.* (1979), 182 Mont. 202, 595 P.2d. 1184.
>
> The open door policy expressed in those cases is followed in this opinion. We hold that the plaintiffs in this case were entitled to bring their FELA actions in either the county where the injury occurred, or in any county in this State. Since they have correctly done so, the defendant BN is not entitled to a change of venue under Section 25-2-201.

Secondly, BN attacks the constitutionality of the venue statute provided in Section 25-2-118 MCA on the grounds that it violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. BN argues that out of state corporations are discriminated against because they can be sued in any county the plaintiff chooses while corporations who reside in Montana can only be sued in the county of their residence. BN argues the proper venue for this action should be Hill County as this is the county they have chosen as their "principal place of business in Montana".

It has long been law in Montana that a statute is presumed to be valid and its constitutionality will not be condemned unless its invalidity is shown beyond reasonable doubt. *State v. Cunningham* 39 Mont. 197, 103 P. 497, (1909). In light of the foregoing standard, the venue statute is presumed to be valid. Therefore, BN must meet the burden of establishing it violates the Equal Protection Clause of the Fourteenth Amendment beyond a reasonable doubt.

In essence BN argues that similar classifications of corporations are receiving dissimilar treatment for litigation purposes under the current venue statutes. The Montana Supreme Court in the case of *State v. Loomis*, 75 Mont. 88, 242 P. 2d. 344 (1925) stated:

> It is conceded, as it must be, that it is competent for the lawmakers to classify subjects of legislation and to deal differently with the different classes created, if the classification is reasonable and not a mere artificial arrangement or subterfuge to avoid inhibition of the Fourteenth Amendment to the federal Constitution. Whether the classification made by the amended Act is reasonable was a matter for legislative determination in the first instance and every reasonable presumption will be indulged in favor of the validity of the Act; in other words, it will be presumed that the classification is reasonable, the defendant must assume the burden of showing that there is not any admissible hypothesis upon which it can be justified.
>
> We enter upon our investigation with this principle in mind: It is not necessary that the classification depend "on scientific or marked differences in things or persons or in their relations." It suffices if it is practical, and it is not reviewable unless palpably arbitrary. (citations omitted.)

Taking into considerations the nature of the hazardous conditions surrounding the railroad industry as well as the fact that an out of state corporation is coming into the state of Montana to do business, the legislatures dissimilar classification is presumed to be reasonable as it is practical and not palpably arbitrary. Therefore, the classification is not reviewable unless the defendant can show that there is no admissible hypothesis upon which it can be justified.

This is not a case of similar corporations receiving unequal treatment, but instead a case of corporations classified as dissimilar, receiving dissimilar treatment. All members of the class are treated the same. All railroads incorporated in other states and doing business in Montana are treated similarly and can be sued in any county the plaintiff chooses.

Finally, the constitutionality of the venue provision in Section 6 of the FELA, as it applies to venue in federal district court, is presumed constitutional in that research has not disclosed any cases in which the constitutionality of this provisions of the act has been questioned. It would be an anomaly to hold unconstitutional the Montana venue statute which provides, in this case, for the same venue as provided for in the venue provision of FELA. As noted above in *Miles v. Illinois Central Railroad*, 315 U.S. 698, 703, 62 S. Ct. 827, 830 (1942), the United States Supreme Court held the venue statutes in the state of the forum govern not the venue provisions of FELA.

Similarly, the Court of Civil Appeals of Texas in *Hopmann v. Southern Pacific Transport Co.*, 581 S.W. 2d 532 (1979) held constitutional the provisions of its state venue statute which limited venue in a FELA action filed in state court to the county in which the plaintiff resides or the county in which he was injured rather than the options provided by FELA. The *Hopmann*

Court based its decision on the fact that FELA gives the plaintiff choice of federal or state court and when state court is selected as the forum the state venue statutes govern. Accordingly, it would appear that the BN's complaint is more properly addressed to the legislature.

It is undisputed that BN is a foreign corporation with no residence in Montana. Pursuant to FELA, Ford chose to file this action in state court. Therefore, the Montana venue statutes govern and the action is properly brought in the county the plaintiff has selected.

Accordingly, BN's motion to change the place of trial is denied.

DATED this 7th day of September, 1990.

/s/ Russell K. Fillner
RUSSELL K. FILLNER
District Court

APPENDIX D

STATUTE INVOLVED

Montana Code Annotated § 25-2-118

25-2-118. Residence of defendant. Unless otherwise specified in this part:

(1) except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them may reside at the commencement of the action;

(2) if none of the defendants reside in the state, the proper place of trial is any county the plaintiff designates in the complaint;

(3) the proper place of trial of an action brought pursuant to Title 40, chapter 4 [domestic relations proceedings], is the county in which the petitioner has resided during the 90 days proceding the commencement of the action.

APPENDIX E

FEDERAL EMPLOYEES LIABILITY ACT CASES AGAINST BURLINGTON NORTHERN RAILROAD IN MONTANA STATE COURT, 1986-1991

Akins v. BN, No. BDV-91-599 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Washington; accident in Spokane, Washington) (pending).

Ament v. BN, No. 89-C-323 (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Missoula County, Montana; accident in Liberty County) (disposed of in 1990).

Amsk v. BN, No. CDV-90-764 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Park County, Montana; accident in Yellowstone County) (pending).

Amsk v. BN, No. ADV-91-226 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Dawson County, Montana; accident in Dawson County) (pending).

Anderson v. BN, No. BDV-81-179 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1986).

Anderson v. BN, No. CDV-89-813 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of South Dakota; accident in Edgemont, South Dakota) (pending).

Averill v. BN, No. 85-C-200 (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Wyoming; accident in Arvada, Wyoming) (disposed of in 1987).

Bardon v. BN, No. ADV-89-365 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Rosebud County, Montana; accident in Rosebud County) (disposed of in 1990).

Bear v. BN, No. CV-81-123-M (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Glacier County, Montana; accident in Glacier County) (disposed of in 1986).

Beatson v. BN, No. CDV-87-651 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Valley County, Montana; accident in Roosevelt County) (disposed of in 1988).

Belden v. BN, No. CDV-90-846 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Bill, Wyoming) (pending).

Belden v. BN, No. ADV-90-847 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (pending).

Belden v. BN, No. ADV-90-847 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Big Horn County) (pending).

Bennett v. BN, No. DV-90-0925 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Hines, Wyoming) (disposed of in 1991).

Berumen v. BN, No. DV-88-029 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Yellowstone County, Montana; accident in Donkey Creek, Wyoming) (disposed of in 1990).

Berumen v. BN, No. ADV-89-528 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Nacco Junction, Wyoming) (disposed of in 1990).

Beto v. BN, No. ADV-91-929 (Mont. Cir. Ct. Cascade Cnty.) (plaintiff resident of Phillips County, Montana; accident in Hill County) (pending).

Bilger v. BN, No. BDV-89-555 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Blaine County, Montana; accident in Blaine County) (disposed of in 1990).

Blanchette v. BN, No. BDV-90-867 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Dawson County, Montana; accident in Rosebud County) (pending).

Borst v. BN, No. BDV-89-364 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1991).

Bowles v. BN, No. CDV-91-869 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Dawson County, Montana; accident in Custer County) (pending).

Brakstad v. BN, No. BDV-89-404 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Fergus County) (pending).

Brinkman v. BN, No. BDV-91-367 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Fergus County) (pending).

Bronder v. BN, No. ADV-86-1048 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Blaine County, Montana; accident in Hill County) (disposed of in 1989).

Brown v. BN, No. ADV-89-1238 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (disposed of in 1991).

Cardinal v. BN, No. CDV-88-492 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Washington; accident in Kettle Falls, Washington) (disposed of in 1989).

Carrasco v. BN, No. 86-C-420 (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Yellowstone County, Montana; accident in Yellowstone County) (disposed of in 1988).

Cheney v. BN, No. 86-319 (Mont. Dist. Ct. Park Cnty.) (plaintiff resident of Wyoming; accident in Parkman, Wyoming) (disposed of in 1989).

Cislo v. BN, No. CDV-87-1242 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Fergus County) (disposed of in 1989).

Clemens v. BN, No. DV-91-1135 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Ulm, Wyoming) (pending).

Comer v. BN, No. ADV-90-202 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Dawson County, Montana; accident in Dawson County) (pending).

Corcoran v. BN, No. DV-85-012 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Roosevelt County) (disposed of in 1987).

Cote v. BN, No. CDV-91-656 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Glacier County) (pending).

Cottrell v. BN, No. BDV-91-197 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (pending).

Counts v. BN, No. ADV-90-105 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Nebraska; accident in Alliance, Nebraska) (disposed of in 1991).

Deluna v. BN, No. DV-89-748 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Sully Springs, North Dakota) (disposed of in 1991).

Deshner v. BN, No. ADV-90-765 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Hill County) (pending).

Dickerson v. BN, No. CDV-90-620 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Nebraska; accident in Bill, Wyoming) (disposed of in 1991).

Dietel v. BN, No. BDV-84-1076 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Washington; accident in Yardley, Washington) (closed).

Douglas v. BN, No. CDV-89-1195 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (disposed of in 1991).

Doyle v. BN, No. DV-91-1141 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Verona, Wyoming).

Easley v. BN, No. DV-86-795 (Mont. Dist. Ct. Gallatin Cnty.) (plaintiff resident of Gallatin County, Montana; accident in Powell County) (disposed of in 1988).

Edeler v. BN, No. DV-88-167 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Norland, Wyoming) (disposed of in 1989).

Engleman v. BN, No. BDV-91-832 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accidents in Phillips, Flathead and Glacier Counties) (pending).

English v. BN, No. CDV-89-397 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1990).

Epple v. BN, No. DV-87-102 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Gillette, Wyoming) (disposed of in 1989).

Erickson v. BN, No. DV-88-1029 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Lariat, Wyoming) (disposed of in 1990).

Ericson v. BN, No. BDV-89-326 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Washington; accident in Spokane, Washington) (disposed of in 1990).

Faxon v. BN, No. DV-90-0927 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Antelope, Wyoming) (disposed of in 1991).

Ford v. BN, No. DV-89-974 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (pending).

Frank v. BN, No. CDV-87-704 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Lewis and Clark County, Montana; accident in Lewis and Clark County) (disposed of in 1988).

Fuller v. BN, No. ADV-88-1100 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (pending).

Gallery v. BN, No. CDV-91-761 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (pending).

Gendrow v. BN, No. CDV-91-300 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (pending).

Gilliland v. BN, No. ADV-88-991 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (disposed of in 1990).

Graham v. BN, No. CDV-91-301 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Missoula County, Montana; accident in Flathead County) (pending).

Gummer v. BN, No. ADV-91-760 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (pending).

Hammer v. BN, No. CDV-90-595 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Yellowstone County, Montana; accident in Sweet Grass County) (disposed of in 1991).

Harms v. BN, No. BDV-86-1000 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Park County, Montana; accident in Gallatin County) (disposed of in 1989).

Harrod v. BN, No. DV-88-1657 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (disposed of in 1991).

Hattenburg v. BN, No. BDV-89-582 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Washington; accident in Odessa, Washington) (disposed of in 1990).

Haug v. BN, No. CDV-88-463 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Park County, Montana; accident in Park County) (disposed of in 1991).

Hayes v. BN, No. ADV-85-819 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Park County, Montana; accident in Warren, Wyoming) (disposed of in 1988).

Healy v. BN, No. DV-88-1160 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of South Dakota; accident in New Castle, Wyoming) (disposed of in 1989).

Henderson v. BN, No. BDV-89-630 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; acident in Hill County) (disposed of in 1990).

Hernandez v. BN, No. CDV-89-483 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Minnesela, Wyoming) (disposed of in 1991).

Hertsgaard v. BN, No. BDV-90-615 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1991).

Hertsgaard v. BN, No. BVD-91-368 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (pending).

Hitchcock v. BN, No. DV-88-1076 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Casper, Wyoming) (disposed of in 1989).

Hobby v. BN, No. BDV-85-1448 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Valley County, Montana; accident in Valley County) (disposed of in 1987).

Hoffman v. BN, No. CDV-89-642 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of North Dakota; accident in West Fargo, North Dakota) (disposed of in 1990).

Hofmeister v. BN, No. DV-88-229 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident Elkhorn, Wyoming) (disposed of in 1989).

Horton v. BN, No. DV-87-768 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Carbon County, Montana; accident in Parkman, Wyoming) (disposed of in 1989).

Houser v. BN, No. ADV-86-1176 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Colorado; accident in Broomfield, Colorado) (disposed of in 1988).

Ivers v. BN, No. BDV-91-926 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (pending).

Jeanneret v. BN, No. 82-C-458 (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Washington; accident in Parkwater, Washington) (disposed of in 1986).

Jennings v. BN, No. BDV-87-1363 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1989).

Johnson v. BN, No. BDV-87-658 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Nebraska; accident in Alliance, Nebraska) (disposed of in 1988).

Johnson v. BN, No. DV-89-975 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (pending).

Johnson v. BN, No. CDV-90-218 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of North Dakota; accident in Dawson County) (pending).

Jolley v. BN, No. ADV-89-1235 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Parkman, Wyoming) (pending).

Jurenic v. BN, No. 88-C-42 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Silver Bow County, Montana; accident in Sweet Grass County) (disposed of in 1988).

Kalanick v. BN, No. ADV-87-1222 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1990).

Keller v. BN, No. BDV-89-010 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of South Dakota; accident in Prairie County) (disposed of in 1990).

Kincaid v. BN, No. CDV-85-924 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Toole County) (disposed of in 1987).

Knutson v. BN, No. BDV-87-1739 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Flathead County) (disposed of in 1988).

Kobielusz v. BN, No. CDV-89-1236 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (disposed of in 1991).

Lambert v. BN, No. CDV-85-958 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Valley County, Montana; accident in Valley County) (disposed of in 1987).

Lasalle v. BN, No. CDV-90-1114 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Chouteau County, Montana; accident in Hill County) (pending).

Lasalle v. BN, No. CDV-91-930 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Chouteau County, Montana; accident in Hill County) (pending).

Lay v. BN, No. BDV-88-045 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Lewis and Clark County, Montana; accident in Lewis and Clark County) (disposed of in 1989).

Lemire v. BN, No. DV-87-1667 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Lewis and Clark County) (disposed of in 1988).

Liese v. BN, No. CDV-89-511 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1991).

Lodinoff v. BN, No. CDV-85-1445 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County (disposed of in 1986).

Luoma v. BN, No. DV-88-1267 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Lovell, Wyoming) (disposed of in 1989).

Marmon v. BN, No. ADV-88-749 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Valley County, Montana; accident in Roosevelt County) (disposed of in 1990).

McClintock v. BN, No. 62195 (Mont. Dist. Ct. Missoula Cnty.) (plaintiff resident of Missoula County, Montana; accident in Flathead County) (disposed of in 1987).

McFall v. BN, No. DV-90-0926 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Casper, Wyoming) (pending).

Meeker v. BN, No. BDV-89-1237 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Sheridan, Wyoming) (disposed of in 1991).

Miller v. BN, No. CDV-88-992 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1989).

Misevic v. BN, No. 90-C-68 (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Missoula County, Montana; accident in Lewis and Clark County) (pending).

Mitchell v. BN, No. ADV-90-079 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Yellowstone County, Montana; accident in Yellowstone County) (disposed of in 1991).

Mogen v. BN, No. ADV-89-165 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Rosebud County, Montana; accident in Rosebud County) (disposed of in 1990).

Mueller v. BN, No. CV-87-164 (Mont. Dist. Ct. Park Cnty.) (plaintiff resident of Yellowstone County, Montana; accident in Yellowstone County) (disposed of in 1989).

Nelson v. BN, No. 87-262 (Mont. Dist. Ct. Park Cnty.) (plaintiff resident of Gallatin County, Montana; accident in Stillwater County) (disposed of in 1990).

Nelson v. BN, No. BDV-89-318 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Mineral County, Montana; accident in Flathead County) (disposed of in 1991).

Oblizalo v. BN, No. CDV-89-477 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Yellowstone County, Montana; accident in Park County) (pending).

O'Brien v. BN, No. BDV-86-1319 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Washington; accident in Spokane, Washington) (disposed of in 1988).

Olsen v. BN, No. BDV-86-1174 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Missoula County) (disposed of in 1988).

Olson v. BN, No. BDV-84-106 (Mont. Dist. Ct. Deer Lodge Cnty.) (plaintiff resident of Park County, Montana; accident in Park County) (disposed of in 1987).

Olson v. BN, No. BDV-90-146 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Flathead County) (disposed of in 1991).

Omvig v. BN, No. ADV-88-960 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Valley County, Montana; accident in Valley County) (disposed of in 1989).

Paul v. BN, No. 90-C-217 (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (disposed of in 1991).

Peccia v. BN, No. DV-88-1064 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Bill, Wyoming) (disposed of in 1989).

Peuneeard v. BN, No. ADV-88-816 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (disposed of in 1991).

Pepos v. BN, No. BDV-91-222 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Powell County) (pending).

Phillips v. BN, No. ADV-88-009 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Park County, Montana; accident in Park County) (disposed of in 1989).

Plouffe v. BN, No. BDV-81-278 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Blaine County, Montana; accident in Hill County) (disposed of in 1987).

Reister v. BN, No. DV-87-944 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Lewis and Clark County, Montana; accident in Broadwater County) (disposed of in 1988).

Rice v. BN, No. 62879 (Mont. Dist. Ct. Missoula Cnty.) (plaintiff resident of Missoula County, Montana; accident in Yellowstone County) (disposed of in 1987).

Richard v. BN, No. CDV-88-1101 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1990).

Rieck v. BN, No. ADV-89-352 (Mont. Dist Ct. Cascade Cnty.) (plaintiff resident of Wyoming; accident in Sage Creek, Wyoming) (disposed of in 1990).

Robbins v. BN, No. 66781 (Mont. Dist. Ct. Missoula Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (disposed of in 1987).

Roseburg v. BN, No. BDV-87-072 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Glacier County, Montana; accident in Glacier County) (disposed of in 1989).

Sadowsky v. BN, No. ADV-91-390 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Dawson County, Montana; accident in Dawson County) (pending).

Sams v. BN, No. DV-87-161 (Mont. Dist. Ct. Yellowstone Cnty.) (plaintiff resident of Wyoming; accident in Gillette, Wyoming) (disposed of in 1989).

Scott v. BN, No. CV-88-C-137 (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Washington; accident in Spokane, Washington) (disposed of in 1990).

Scott v. BN, No. BDV-90-1182 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Cascade County, Montana; accident in Toole County) (pending).

Seibel v. BN, No. CRV-90-1124 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Lewis and Clark County, Montana; accident in Lewis and Clark County) (pending).

Sikveland v. BN, No. CDV-91-225 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Dawson County, Montana; accident in Custer County) (pending).

Smith v. BN, No. 72091 (Mont. Dist. Ct. Missoula Cnty.) (plaintiff resident of Washington; accident in Athol, Idaho) (disposed of in 1991).

Stazel v. BN, No. BDV-87-1296 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Washington; accident in Newhauser, Idaho) (disposed of in 1988).

Stebleton v. BN, No. BDV-91-910 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Valley County, Montana; accident in Minot, North Dakota) (pending).

Swanson v. BN, No. CDV-86-313 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Hill County, Montana; accident in Hill County) (disposed of in 1987).

Thompson v. BN, No. ADV-91-243 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of North Dakota; accident in Mandan, North Dakota) (pending).

Turner v. BN, No. ADV-90-457 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Meagher County, Montana; accident in Hill County) (pending).

Wickum v. BN, No. CDV-91-898 (Mont. Dist. Ct. Cascade Cnty.) (plaintiff resident of Flathead County, Montana; accident in Hill County) (pending).

Wildman v. BN, No. CV-84-195-M (Mont. Dist. Ct. Missoula Cnty.) (plaintiff resident of Custer County, Montana; accident in Yellowstone County) (disposed of in 1986).

Wright v. BN, No. 66813 (Mont. Dist. Ct. Missoula Cnty.) (plaintiff resident of Flathead County, Montana; accident in Flathead County) (disposed of in 1988).

Wyant v. BN, No. CV-88-9-BU (Mont. Dist. Ct. Silver Bow Cnty.) (plaintiff resident of Silver Bow County, Montana; accident in Bonners, Idaho) (disposed of in 1990).

APPENDIX F

FEDERAL EMPLOYEES LIABILITY ACT CASES AGAINST BURLINGTON NORTHERN RAILROAD IN MONTANA STATE COURT, 1986-1991

1. *Plaintiffs Non-Resident in Montana*

Plaintiff's Name	State of Residence	Location of Accident	Montana Cnty. Ct.
Akins	Washington	Spokane, WA	Cascade
Anderson, W.	South Dakota	Edgemont, SD	Cascade
Averill	Wyoming	Arvada, WY	Silver Bow
Belden, E.	Wyoming	Sheridan, WY	Cascade
Belden, D.	Wyoming	Bill, WY	Cascade
Bennett	Wyoming	Hines, WY	Yellowstone
Berumen, W.	Wyoming	Nacco Jct., WY	Cascade
Brown	Wyoming	Sheridan, WY	Cascade
Cardinal	Washington	Kettle Falls, WA	Cascade
Cheney	Wyoming	Parkman, WY	Park
Clemens	Wyoming	Ulm, WY	Yellowstone
Counts	Nebraska	Alliance, NE	Cascade
Deluna	Wyoming	Sully Springs, ND	Yellowstone
Dickerson	Nebraska	Bill, WY	Cascade
Dietel	Washington	Yardley, WA	Cascade
Douglas	Wyoming	Sheridan, WY	Cascade
Doyle	Wyoming	Verona, WY	Yellowstone
Edeler	Wyoming	Norland, WY	Yellowstone
Epple	Wyoming	Gillette, WY	Yellowstone
Erickson	Wyoming	Lariat, WY	Yellowstone
Ericson	Washington	Spokane, WA	Cascade
Faxon	Wyoming	Antelope, WY	Yellowstone
Harrod	Wyoming	Sheridan, WY	Yellowstone
Ford	Wyoming	Sheridan, WY	Yellowstone
Hattenburg	Washington	Odessa, WA	Cascade
Healy	South Dakota	New Castle, WY	Yellowstone
Hernandez	Wyoming	Minnesela, WY	Cascade
Hitchcock	Wyoming	Casper, WY	Yellowstone
Hoffman	North Dakota	West Fargo, ND	Cascade
Hofmeister	Wyoming	Elkhorn, WY	Yellowstone
Houser	Colorado	Broomfield, CO	Cascade
Jeanneret	Washington	Parkwater, WA	Silver Bow

Plaintiff's Name	State of Residence	Location of Accident	Montana Cnty. Ct.
Johnson, G.	South Dakota	Dawson Cty., MT	Cascade
Johnson, R.	Nebraska	Alliance, NE	Cascade
Johnson, T.	Wyoming	Sheridan, WY	Yellowstone
Jolley	Wyoming	Parkman, WY	Cascade
Keller	South Dakota	Prairie Cty., MT	Cascade
Kobielusz	Wyoming	Sheridan, WY	Cascade
Luoma	Wyoming	Lovell, WY	Yellowstone
McFall	Wyoming	Casper, WY	Yellowstone
Meeker	Wyoming	Sheridan, WY	Cascade
O'Brien	Washington	Spokane, WA	Cascade
Peccia	Wyoming	Bill, WY	Yellowstone
Rieck	Wyoming	Sage Creek, WY	Cascade
Sams	Wyoming	Gillette, WY	Yellowstone
Scott	Washington	Spokane, WA	Silver Bow
Smith	Washington	Athol, ID	Missoula
Stazel	Washington	Newhauster, ID	Cascade
Thompson	North Dakota	Mandan, ID	Cascade

2. *Plaintiffs Residents of Montana*

Plaintiff's Name	County of Residence	Location of Accident (Montana County if no state indicated)	Montana Cnty. Ct.
Ament	Missoula Cty., MT	Liberty	Silver Bow
Amsk, D.	Park Cty., MT	Yellowstone	Cascade
Amsk, M.	Dawson Cty., MT	Dawson	Cascade
Anderson, J.	Hill Cty., MT	Hill	Cascade
Bardon	Rosebud Cty., MT	Rosebud	Cascade
Bear	Glacier Cty., MT	Glacier	Cascade
Beatson	Valley Cty., MT	Roosevelt	Cascade
Belden, J.	Wyoming	Big Horn	Cascade
Berumen, S.	Yellowstone Cty., MT	Donkey Creek, WY	Yellowstone
Beto	Phillips Cty., MT	Hill	Cascade
Bilger	Blaine Cty., MT	Blaine	Cascade
Blanchette	Dawson Cty., MT	Rosebud	Cascade
Borst	Hill Cty., MT	Hill	Cascade
Bowles	Dawson Cty., MT	Custer	Cascade
Brakstad	Cascade Cty., MT	Fergus	Cascade
Brinkman	Cascade Cty., MT	Fergus	Cascade

Plaintiff's Name	County of Residence	Location of Accident (Montana County if no state indicated)	Montana Cnty. Ct.
Bronder	Blaine Cty., MT	Hill	Cascade
Carrasco	Yellowstone Cty., MT	Yellowstone	Silver Bow
Cislo	Cascade Cty., MT	Fergus	Cascade
Comer	Dawson Cty., MT	Dawson	Cascade
Corcoran	Hill Cty., MT	Roosevelt	Cascade
Cote	Flathead Cty., MT	Glacier	Cascade
Cottrell	Hill Cty., MT	Hill	Cascade
Deshner	Cascade Cty., MT	Hill	Cascade
Easley	Gallatin Cty., MT	Powell	Gallatin
Engleman	Hill Cty., MT	Phillips, Flathead & Glacier	Cascade
English	Hill Cty., MT	Hill	Cascade
Frank	Lewis and Clark Cty., MT	Lewis and Clark	Cascade
Fuller	Flathead Cty., MT	Flathead	Cascade
Gallery	Flathead Cty., MT	Flathead	Cascade
Gendrow	Flathead Cty., MT	Flathead	Cascade
Gilliland	Flathead Cty., MT	Flathead	Cascade
Graham	Missoula Cty., MT	Flathead	Cascade
Gummer	Hill Cty., MT	Hill	Cascade
Hammer	Yellowstone Cty., MT	Sweet Grass	Cascade
Harms, T.G.	Park Cty., MT	Gallatin	Cascade
Haug	Park Cty., MT	Park	Cascade
Hayes	Park Cty., MT	Warren, WY	Cascade
Henderson	Hill Cty., MT	Hill	Cascade
Hertsgaard, J.	Hill Cty., MT	Hill	Cascade
Hertsgaard, J.	Hill Cty., MT	Hill	Cascade
Hobby	Valley Cty., MT	Valley	Cascade
Horton	Carbon Cty., MT	Parkman, WY	Yellowstone
Ivers	Flathead Cty., MT	Flathead	Cascade
Jennings	Hill Cty., MT	Hill	Cascade
Jurenic	Silver Bow Cty., MT	Sweet Grass	Cascade
Kalanick	Hill Cty., MT	Hill	Cascade
Kincaid	Cascade Cty., MT	Toole	Cascade
Knutson	Hill Cty., MT	Flathead	Cascade
Lambert	Valley Cty., MT	Valley	Cascade

Plaintiff's Name	County of Residence	Location of Accident (Montana County if no state indicated)	Montana Cnty. Ct.
LaSalle, J.	Chouteau Cty., MT	Hill	Cascade
LaSalle, J.	Chouteau Cty., MT	Hill	Cascade
Lay	Lewis and Clark Cty., MT	Lewis and Clark	Cascade
Lemire	Hill Cty., MT	Lewis and Clark	Cascade
Liese	Hill Cty., MT	Hill	Cascade
Lodinoff	Flathead Cty., MT	Flathead	Cascade
Marmon	Valley Cty., MT	Roosevelt	Cascade
McClintock	Missoula Cty., MT	Flathead	Missoula
Miller	Hill Cty., MT	Hill	Cascade
Misevic	Missoula Cty., MT	Lewis and Clark	Silver Bow
Mitchell	Yellowstone Cty., MT	Yellowstone	Cascade
Mogen	Rosebud Cty., MT	Rosebud	Cascade
Mueller	Yellowstone Cty., MT	Yellowstone	Park
Nelson, E.	Gallatin Cty., MT	Stillwater	Park
Nelson, J.	Mineral Cty., MT	Flathead	Cascade
Oblizalo	Yellowstone Cty., MT	Park	Cascade
Olsen	Cascade Cty., MT	Missoula	Cascade
Olson	Park Cty., MT	Park	Deer Lodge
Olson	Cascade Cty., MT	Flathead	Cascade
Omvig	Valley Cty., MT	Valley	Cascade
Paul	Flathead Cty., MT	Flathead	Silver Bow
Pennecard	Flathead Cty., MT	Flathead	Cascade
Pepos	Cascade Cty., MT	Powell	Cascade
Phillips	Park Cty., MT	Park	Cascade
Plouffe	Blaine Cty., MT	Hill	Cascade
Reister	Lewis and Clark Cty., MT	Broadwater	Yellowstone
Rice	Missoula Cty., MT	Yellowstone	Missoula
Richard	Hill Cty., MT	Hill	Cascade
Robbins	Flathead Cty., MT	Flathead	Missoula
Roseburg	Glacier Cty., MT	Glacier	Cascade
Sadowsky	Dawson Cty., MT	Dawson	Cascade
Scott	Cascade Cty., MT	Toole	Cascade
Seibel	Lewis and Clark Cty., MT	Lewis and Clark	Cascade

Plaintiff's Name	County of Residence	Location of Accident (Montana County if no state indicated)	Montana Cnty. Ct.
Sikveland	Dawson Cty., MT	Custer	Cascade
Stebleton	Valley Cty., MT	Minot, ND	Cascade
Swanson	Hill Cty., MT	Hill	Cascade
Turner	Meagher Cty., MT	Hill	Cascade
Wickum	Flathead Cty., MT	Hill	Cascade
Wildman	Custer Cty., MT	Yellowstone	Missoula
Wright	Flathead Cty., MT	Flathead	Missoula
Wyant	Silver Bow Cty., MT	Bonners, ID	Silver Bow